

CHAPTER 3 UNEMPLOYMENT COMPENSATION

300 UNEMPLOYMENT COMPENSATION BOARD

- 300.1 The provisions of this chapter are promulgated to implement the District of Columbia Unemployment Compensation Act, as amended, 49 Stat. 946 (1935); §46-301 et seq., D.C. Code, 1981 ed. (hereinafter referred to as "the Act").
- 300.2 The District of Columbia Unemployment Compensation Board (hereinafter referred to as "the Board") is authorized by §13(b) of the Act to prescribe all reasonable rules which may be necessary to implement the Act, subject to review by the Council of the District of Columbia for thirty (30) calendar days from the date of transmittal by the Chairman of the Board to the Chairman of the Council.
- 300.3 In accordance with §15(a) of the Act, the Board is composed of the Mayor or his or her designee as member ex-officio, two (2) representatives of employers and two (2) representatives of employees.
- 300.4 The Chairman of the Board shall vote only to break a tie.
- 300.5 Regular meetings of the Board shall be open to the public and are scheduled for the first Thursday of each quarter at 9:00 a.m. at 500 C Street, N.W.
- 300.6 When the necessity for special or emergency meetings arises, adequate and timely notice shall be provided to the public.
- 300.7 In accordance with §13(a) of the Act, Reorganization Plan No. 1 of 1978 and Reorganization Plan No. 1 of 1980, the Director is authorized and directed to administer the provisions of the Act pursuant to rules adopted by the Board.

301 BYLAWS OF THE UNEMPLOYMENT COMPENSATION BOARD

- 301.1 The Chair shall be the chief executive officer of the Board and shall supervise its affairs, preside at its meetings and exercise such other powers and duties as may from time to time be assigned by the Act.
- 301.2 In the absence of the Chair, his or her designee shall function as the Chair and also perform such other duties as shall be prescribed by the Chair or the Board.

301 BYLAWS OF THE UNEMPLOYMENT COMPENSATION BOARD (Continued)

301.3 The Chair of the Board may when he or she deems it appropriate, and shall, upon the written request of any two (2) or more members, call a special meeting of the Board for the purposes of transacting any business designated in the call.

301.4 The call for a special meeting may be hand delivered to each member at least two (2) days in advance of the meeting or may be mailed to the business or home address of each member at least five (5) days in advance of the meeting.

301.5 At any special meeting, no business shall be considered other than that specified in the call.

301.6 For the purpose of transacting business and conducting the affairs of the Board, a majority of the members shall constitute a quorum; Provided, that one (1) employee representative and one (1) employer representative is present at the meeting.

301.7 All meetings except Executive sessions of the Board shall be open to the public. All actions or decisions of the Board shall be formally taken at a public meeting.

301.8 Non-members shall be seated as spectators as far as the limitations of space and safety permit.

301.9 Except as otherwise provided in this chapter, at least ten (10) days advance notice shall be given for all meetings.

301.10 Non-members of the Board, at the discretion of the Chair, shall be permitted to present propositions to the Board for consideration. Non-members shall not have the right to vote.

301.11 The voting on all matters by the Board shall be by voice vote or by a show of hands, and the number of yeas and nays shall be entered in the minutes.

301.12 Any member may request a roll call vote at which time the vote cast by each member shall be recorded and entered into the minutes.

301.13 At the regular meetings of the Board, the following shall be the order of business:

(a) Roll Call;

(b) Reading and Approval of Minutes of Previous Meetings;

(c) Communications;

(d) Report of Chair;

301 BYLAWS OF THE UNEMPLOYMENT COMPENSATION BOARD (Continued)

301.13 (Continued)

- (e) Report of Staff;
- (f) Unfinished Business;
- (g) New Business; and
- (h) Adjournment.

301.14 Each member of the Board and staff shall sit in a designated place so that they are clearly distinguished from others attending meetings.

301.15 The Chair will normally invite public participants to make brief comments or ask questions during and before adjournment of each meeting.

301.16 In all proceedings of the Board, **Robert's Rules of Order, Newly Revised**, shall apply in all matters not expressly covered by this section or by contrary rule duly adopted.

301.17 This section, constituting the bylaws of the Board, shall be amended only by a vote of at least two-thirds (2/3) of its members at a regular meeting or a special meeting of which at least seven (7) days written notice has been given to all of the members.

301.18 Any individual who wishes to present proposed additions, amendments, or repealers to the Board for consideration may do so by submitting a written copy of the proposal to the Chair. The proposals shall be submitted by the Chair to the Board at its next regular meeting or at an earlier time if deemed appropriate by the Chair.

302 OFFICE OF UNEMPLOYMENT COMPENSATION

302.1 In accordance with Reorganization Plan No. 1 of 1980, the Director administers the Act through the Office of Unemployment Compensation.

302.2 Office hours shall be established by the Director and shall be posted and made known to all employers and employees subject to the provisions of the Act.

302.3 The Director shall consider a document timely filed when the transmitting envelope bears a postmark of not later than midnight of the day specified for the filing.

303**DISCLOSURE OF INFORMATION**

- 303.1 All information, files and records of the Department of Employment Services reflecting information obtained from an employing unit or individual pursuant to administration of the Act by the Director shall be held confidential and shall not be disclosed nor open to public or private inspection by anyone, except as hereinafter provided in this section and §13(f) of the Act.
- 303.2 Information in the possession of the Director which concerns a claim for benefits or affects a charge to an employer's account shall be available for inspection by interested parties during office hours to the extent necessary for the proper representation of a party's position in any proceeding under the Act.
- 303.3 Upon request, an interested party (or a duly authorized representative who has supplied the Director with a letter of authorization and satisfactory proof of identity) shall be furnished copies of the information.
- 303.4 No information shall be released to any of the agencies, bureaus, or departments specified in §13(f) of the Act, unless a written request has been first submitted to the Director stating the specific information desired, the specific purpose for which the information is to be used, and the name of any person authorized by the principal to receive the information from the Director.
- 303.5 The Director shall charge a fee which shall be the cost of supplying or preparing the information.
- 303.6 Printed statements of general applicability to the public in the form of informational pamphlets or brochures, shall be made available to claimants and employers by the Director at no cost. The statements shall be of a general nature and shall not have the force or effect of law.
- 303.7 The Director may periodically compile and make available to the public, statistical data or other information which does not disclose the identity of any individual or employing unit.
- 303.8 With regard to disclosure of aggregated information obtained from employing units, information shall be deemed confidential if there are fewer than three (3) establishments in the aggregation or if any one (1) establishment represents eighty percent (80%) or more of the total employment in the aggregation.

304 CLAIMS FOR BENEFITS

- 304.1 In accordance with §11(a) of the Act, individuals may apply for benefits by filing a claim with the Director.
- 304.2 An initial claim may also be deemed by the Director to be an individual's registration for work.
- 304.3 All claims for benefits shall be made on forms prescribed by the Director.
- 304.4 Claimants shall state the following information with respect to initial claims:
- (a) Claimant's name;
 - (b) Claimant's social security number;
 - (c) Claimant's present address;
 - (d) That the individual claims benefits for unemployment;
 - (e) That the individual is physically able to work;
 - (f) That the individual is available for work; and
 - (g) Any other information as the Director determines is reasonably necessary to establish the individual's eligibility for benefits, including the reason for separation given the claimant by his or her last employer.
- 304.5 In addition to the information required by §304.4, claimants shall state the following information with respect to continued claims:
- (a) That the individual continued his or her claim for benefits;
 - (b) That the individual has registered for work;
 - (c) That the individual is unemployed; and
 - (d) That during the week for which benefits are claimed, the individual has performed no services and had no earnings payable to him or her except those declared.
- 304.6 Each claimant shall be given notice of his or her rights and duties under the Act. The Director shall provide information regarding the various eligibility conditions, redetermination procedures, and right to appeal.

304 CLAIMS FOR BENEFITS (Continued)

- 304.7 Any individual who claims a dependent's allowance pursuant to §§1(s) and 7(f) of the Act shall file with his or her initial claim a signed statement identifying his or her dependent relatives.
- 304.8 When an individual files a claim for benefits, the Director shall notify the last employing unit, and request wage and separation information on a form designed for that purpose.
- 304.9 Each employing unit shall respond within seven (7) calendar days from the date of personal service or of mailing the request to the last known address of the employer.
- 304.10 An employer who fails to either furnish a notice or Separation Report to the Director, that the employee was separated under conditions which may subject him or her to disqualification for benefits under §10 of the Act [D.C. Code 1981, §46-111] shall be presumed to have admitted that the employee is not subject to disqualification under any provision of §10.
- 304.11 Any employer who is adversely affected by the provisions of §304.10 shall have the right to appeal the determination.

305 DETERMINATION OF CLAIMS

- 305.1 In accordance with §11(b) of the Act, the Director shall make an initial determination of eligibility promptly.
- 305.2 For purposes of this section, "predetermination fact-finding interview" is an informal hearing at which evidence is received. This evidence shall be used to determine whether an otherwise eligible claimant is subject to disqualification.
- 305.3 The Director shall notify the claimant and his or her most recent employer of the time and place of the predetermination fact-finding interview.
- 305.4 The claimant's most recent employer shall be responsible for presenting data at the predetermination fact-finding interview to make clear his or her objections to the claim. The employer's minimum obligation shall be to inform the Director and the claimant of any and all disqualifying factors.
- 305.5 The Director's initial determination of eligibility shall include the following:
- (a) Whether or not benefits may be payable;
 - (b) The week when payments will commence if claimant is otherwise eligible;

305 DETERMINATION OF CLAIMS (Continued)

305.5 (Continued)

(c) The maximum duration of the individual's eligibility for benefits; and

(d) The weekly benefit amount.

305.6 When the Director has made a determination of an individual's right to benefits, he or she shall promptly notify the claimant and interested parties of the determination and the reasons for the determination.

306 FIRST LEVEL APPEALS

306.1 In accordance with §11(b) of the Act, any party may file an appeal from a determination within ten (10) calendar days after the mailing of notice of the determination to the party's last known address or within ten (10) calendar days of actual delivery of the notice.

306.2 When a determination, redetermination, or decision is made that benefits are due, the benefits shall immediately become payable and continue to be payable to the unemployed individual, subject to the limitations imposed by the individual's monetary entitlement, as long as the individual continues to be otherwise eligible.

306.3 An impartial hearing on the appeal shall be scheduled and written notice of the hearing shall be given to all interested parties.

306.4 In any proceeding under §11 of the Act, a party may appear for himself or herself, or be represented by Counsel or other individual whom the party chooses.

306.5 No hearing examiner shall participate in the hearing of any appeal in which he or she has a financial interest or any other interest which would tend to prevent an impartial hearing.

306.6 Challenges to the impartiality of any hearing examiner shall be heard and decided by the Director.

306.7 The hearing examiner shall at all times maintain a posture of impartiality and shall side neither with the appellant nor appellee.

307 CONDUCT OF HEARINGS

- 307.1 All hearings before a hearing examiner shall be conducted so as to ensure the protection of the substantial rights of the parties and the presentation of all relevant issues for consideration and incorporation in any decision.
- 307.2 All facts used as the basis of a decision shall be clearly identified in the record.
- 307.3 If any party fails without good cause to appear at the scheduled time of hearing, the hearing examiner may continue the hearing to another date and time or may order the taking of the testimony as is available and proceed with a determination of the appeal on the basis of the evidence then and there available; Provided, that all requirements imposed by the Act and this chapter are met.
- 307.4 A case may be reopened by a party who did not attend a scheduled hearing only if the party gives written notice to the Director within ten (10) calendar days after the date of the hearing that his or her failure to attend the hearing was for reasons which constitute good cause, as determined by §316.4 of this chapter.
- 307.5 A request for reopening received before the decision of the hearing examiner is mailed, shall be decided by the examiner before whom the case is pending.
- 307.6 A request for reopening received after the decision of the hearing examiner was mailed to the party shall constitute an appeal to the Director, and the Director shall rule upon the request in connection with that appeal.
- 307.7 Written notice of the request for reopening shall be given to each of the parties, and shall include the reasons for the request and a clear statement of appeal rights.
- 307.8 If a request is allowed, the case shall be reopened, a new hearing shall be scheduled, and written notice of the new hearing shall be given to each of the parties.
- 307.9 At any reopened hearing, each party shall be given the opportunity to object to the reopening.
- 307.10 Each party shall have the right to do the following:
- (a) To present an affirmative case or defense by oral and documentary evidence;
 - (b) To submit rebuttal evidence; and
 - (c) To conduct cross-examination as may be required for a full and true disclosure of the facts.

307 CONDUCT OF HEARINGS (Continued)

- 307.11 An official record of each hearing shall be maintained in each case, including, testimony exhibits. It shall not be necessary to make a transcription of the proceeding.
- 307.12 Upon request, any claimant (or the claimant's legal representative) shall be supplied with information from the record to the extent necessary for the proper presentation of the claim. The Director shall charge a fee to cover the cost for a transcription of a proceeding.
- 307.13 Upon the written request of a party to an action, a subpoena may be issued pursuant to §13(a) of the Act to compel attendance of witnesses and the production of books, papers, correspondence, memoranda, or other records necessary for evidence in connection with a disputed claim.
- 307.14 The parties to an appeal, with the consent of the hearing examiner to whom the case has been assigned, may stipulate the pertinent facts in writing. The hearing examiner to whom the case has been assigned, may stipulate the pertinent facts in writing. The hearing examiner may then decide the appeal on the basis of the stipulations or may set the appeal down for hearing and take further testimony.
- 307.15 In accordance with §11(g) of the Act, witnesses (other than witnesses who are salaried employees of either the government of the United States or the District of Columbia) who are subpoenaed and who attend the hearing of any appeal shall be entitled upon application to receive five dollars (\$5.00) for each day of attendance.

308 DECISION OF HEARING EXAMINER

- 308.1 No decision or order shall be issued except upon the consideration of the exclusive record in each case.
- 308.2 Each decision shall be supported by findings of fact based on evidence which is reliable, probative, and substantial.
- 308.3 Each decision or order rendered by a hearing examiner shall be in writing and shall contain findings of fact and supporting conclusions of law. The findings of fact shall consist of a concise statement of conclusions upon each contested issue of fact.

309 SECOND LEVEL APPEALS

- 309.1 In accordance with §11(e) of the Act, a party may petition the Director for reconsideration of the decision of a hearing examiner.
- 309.2 A petition for reconsideration shall be filed within ten (10) calendar days of the mailing of the decision.
- 309.3 Each petition for reconsideration based upon newly discovered evidence shall be verified under oath and shall set forth the nature of the evidence in detail, showing clearly that it is in fact newly discovered.
- 309.4 Upon receipt of a petition for reconsideration, the Director shall consider all matters presented by the record and decision, and on the basis of the consideration, the Director shall affirm, reverse, or modify the prior decision.
- 309.5 The Director may set the decision aside and order a rehearing or the taking of additional evidence before the same hearing examiner, a different hearing examiner, or the Director.
- 309.6 All final decisions rendered by the Director affirming, reversing, or modifying any decision of a hearing examiner shall become effective immediately.
- 309.7 Prompt notice of the decision of the Director shall be mailed or delivered to the petitioner and other parties in interest.

310 JUDICIAL REVIEW OF FINAL DECISIONS

- 310.1 After the final decision of the Director, an aggrieved party may petition the District of Columbia Court of Appeals for review of the final administrative action.
- 310.2 A petition for review shall be filed within fifteen (15) days after the actual delivery of the decision or after the mailing of the decision to the appellant's last known address.

311 VOLUNTARY LEAVING

- 311.1 Pursuant to §10(a) of the Act, the Director shall disqualify for benefits any individual who left his or her most recent work voluntarily without good cause connected with the work.
- 311.2 In determining whether a leaving disqualifies an individual for benefits, it shall appear from the circumstances of a particular case that the leaving was voluntary in fact, within the ordinary meaning of the word "voluntary".

311 VOLUNTARY LEAVING (Continued)

- 311.3 A leaving shall be presumed to be involuntary unless the claimant acknowledges that the leaving was voluntary or the employer presents evidence sufficient to support a finding by the Director that the leaving was voluntary.
- 311.4 If it is established that a leaving was voluntary, the claimant shall have the responsibility of presenting evidence sufficient to support a finding by the Director of good cause connected with the work for the voluntary leaving.
- 311.5 The circumstances which constitute good cause connected with the work shall be determined by the Director based upon the facts in each case. The test shall be, "what would a reasonable and prudent person in the labor market do in the same circumstances?"
- 311.6 The following shall not constitute good cause connected with the work for voluntary leaving:
- (a) Refusal to obey reasonable employer rules;
 - (b) Minor reduction in wages;
 - (c) Transfer from one type of work to another which is reasonable and necessary;
 - (d) Marriage or divorce resulting in a change of residence;
 - (e) General dissatisfaction with work;
 - (f) Resignation in order to attend school or training; and
 - (g) Personal or domestic responsibilities.
- 311.7 Reasons considered good cause connected with the work for voluntary leaving include, but are not limited to, the following:
- (a) Racial discrimination or harassment;
 - (b) Sexual discrimination or harassment;
 - (c) Failure to provide remuneration for employee services;
 - (d) Working in unsafe locations or under unsafe conditions;
 - (e) Illness or disability caused or aggravated by the work; Provided, that the claimant has previously supplied the employer with a medical statement; and

311 VOLUNTARY LEAVING (Continued)

311.7 (Continued)

(f) Transportation problems arising from the relocation of the employer, a change in the primary work site, or transfer of the employee to a different work site; Provided, that adequate, economical, and reasonably distanced transportation facilities are not available.

311.8 If an employee resigned under threat of imminent termination, the separation shall be considered a constructive discharge for misconduct and a determination shall be made by the Director in accordance with §312.

311.9 RESERVED

311.10 When an individual is temporarily separated from employment by reason of pregnancy and is unemployed within the meaning of the Act, able, available and actively seeking work, that individual may be entitled to benefits. A determination shall be made as to the separation issue but claimant shall not be automatically subject to disqualification for voluntarily quitting under §10(a) of the Act [Sec. 46-111(a), D.C. Code 1981, ed.]

311.11 A voluntary quit because of pregnancy shall be treated like any other voluntary quit because of physical condition or disability. The claims examiner shall inquire into the claimant's availability and availability for suitable work and make a determination regarding eligibility for benefits in accordance with the Act and this chapter.

312 MISCONDUCT

312.1 Pursuant to §10(b) of the Act, the Director shall disqualify for benefits any individual who has been discharged for misconduct occurring in the course of the claimant's most recent work.

312.2 The party alleging misconduct has the responsibility to present evidence sufficient to support a finding of misconduct by the Director.

312 MISCONDUCT (Continued)

312.3 Misconduct occurring in the course of work includes, but is not limited to, the following:

- (a) Willful violation of employer's rules;
- (b) Intoxication;
- (c) Repeated disregard of reasonable orders;
- (d) Sabotage;
- (e) Gross neglect of duties;
- (f) Insubordination; and
- (g) Dishonesty.

312.4 If willful violation of employer's rules is the basis for a disqualification from benefits because of misconduct, the Director shall determine the following:

- (a) That the existence of the employer's rule was known to the employee;
- (b) That the employer's rule is reasonable; and
- (c) That the employer's rule is consistently enforced by the employer.

312.5 In an appeals hearing, no misconduct shall be presumed. The absence of facts which affirmatively establish misconduct shall relieve a claimant from offering evidence on the issue of misconduct.

312.6 In an appeals hearing, the persons who supplied the answers to questionnaires or issued other statements alleging misconduct shall be present and available for questioning by the adverse party.

312.7 Prior statements or written documents, in the absence of other reliable corroborating evidence, shall not constitute evidence sufficient to support a finding of misconduct by the Director.

313 REFUSAL OF SUITABLE WORK

313.1 Pursuant to §10(c) of the Act, the Director shall disqualify any individual otherwise eligible for benefits who fails to apply for or accept suitable work, unless the Director determines that good cause for the failure exists.

313 REFUSAL OF SUITABLE WORK (Continued)

313.2 The Director shall determine whether work is suitable after considering the following:

- (a) The physical fitness and prior training, experience, and earnings of the individual;
- (b) The distance of the place of work from the individual's place of residence; and
- (c) The risk involved as to health, safety, or morals.

313.3 The following circumstances shall not constitute "good cause" for failure to apply for or to accept suitable work:

- (a) Slight differences in wages or hours of work;
- (b) Difference in locality of work where transportation facilities are adequate, economical, and reasonably distant.
- (c) Temporary physical disability which does not substantially interfere with ability to work; and
- (d) General or personal objections to employer or to fellow workers.

314 REFUSAL OF TRAINING

314.1 In accordance with §10(e) of the Act, the Director shall disqualify for benefits any otherwise eligible individual who fails without good cause to attend a training or retraining course; Provided, that the course is recommended by the Director and the course is available at public expense.

314.2 The following shall not constitute good cause for failure to attend training:

- (a) Refusal to attend at any time without strong compelling reason and excuse;
- (b) Personal inconvenience;
- (c) Personal dislike of curricula or teachers; and
- (d) Disbarment from recommended training as a result of improper conduct or action on the part of a claimant.

314 REFUSAL OF TRAINING (Continued)

314.3 For purposes of this section, good cause for failure to attend training includes, but is not limited to, the circumstances set forth in §316.4.

314.4 The disqualification for benefits for refusal of training shall be imposed with respect to any week in which the failure occurred.

315 LABOR DISPUTES

315.1 In accordance with §10(f) of the Act, the Director shall disqualify for benefits any individual who is unemployed as a direct result of a labor dispute, other than a lockout, still in active progress in the establishment where the individual is or was last employed.

315.2 The labor dispute disqualification shall not apply with respect to a claimant if the following is shown to the satisfaction of the Director:

(a) That the claimant is not participating in or directly interested in the labor dispute which caused his or her unemployment; and

(b) That the claimant does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the dispute occurs, any of whom were participating in or directly interested in the dispute.

315.3 The labor dispute disqualification shall be imposed with respect to any week for which the Director makes appropriate findings.

316 REGISTRATION FOR WORK

316.1 In accordance with §9(d) of the Act, the frequency and manner requirements for claimants to register and inquire for work at a public employment office in the District of Columbia are set forth in this section.

316.2 Each claimant shall register and inquire for work as specifically instructed by the Director.

316.3 Upon a finding that good cause exists, the Director may permit a claimant to register and inquire for work at any other public employment office or may excuse failure to comply with the registration requirements.

316**REGISTRATION FOR WORK (Continued)****316.4**

Justifiable reasons which the Director may consider as constituting good cause for failure of a claimant to register and inquire for work as instructed include, but are not limited to the following:

- (a) Acts of God which prevented the claimant from safely reaching a public employment office;
- (b) Working;
- (c) Seeking work where there is a reasonable indication that work is available;
- (d) Reasonably relying on a promise of work which did not materialize;
- (e) Failure by the Director to provide services when scheduled, including closing of Department of Employment Services office.
- (f) Personal physical incapacity;
- (g) The physical incapacity or death of a relative or ward of either the claimant or claimant's spouse;
- (h) The death of any person living in claimant's household;
- (i) Attendance at a funeral; and
- (j) Jury duty.

316.5

A claimant who fails to register and inquire for work as instructed by the Director may be held ineligible for each week in which the registration requirement is not met.

317**PENSIONS AND ANNUITIES****317.1**

In accordance with §7(c) of the Act, the Director shall reduce the benefits payable to an individual with respect to any week by the amount received or applied for with respect to that week as a deductible retirement pension or annuity.

317.2

The Director shall develop a pension conversion table showing the correlation between the amount received on a monthly basis as a deductible retirement pension or annuity and the prorated weekly amount of the retirement pension or annuity which is reasonably attributable to a week.

317 PENSIONS AND ANNUITIES (Continued)

317.3 A claimant whose weekly deductible retirement pension or annuity is equal to or greater than the weekly benefit amount which would be payable to the claimant shall be ineligible to receive any benefits for the week.

317.4 A claimant whose weekly benefit amount exceeds the weekly deductible retirement pension or annuity amount shall be entitled to receive the difference as a weekly benefit.

318 CONTRIBUTIONS

318.1 Pursuant to §3 of the Act, an employer is liable for contributions to the District Unemployment Fund if he or she employs one (1) or more individuals in any employment in the District of Columbia.

318.2 All services in employment shall be presumed to be covered unless specifically excluded by §1(b) of the Act.

318.3 Where facts are in dispute, the Director shall determine, in accordance with §1(b) of the Act, whether the services of an individual constitute employment and the identity of the employer of that individual.

318.4 Where doubt exists between two (2) or more employers regarding which is the employer of an individual, an agreement may be made stipulating which employer shall file the return and make the contributions required by the Act. The Director shall consider the prior written agreement of the employers in determining who is the liable employer.

318.5 Where an individual performs services in employment for two (2) or more employers during the same period, each employer shall make contributions on the basis of each employer's payments to the individual.

318.6 The Director shall determine, in accordance with §1(b)(2) of the Act, whether an individual's service in employment is localized in the District of Columbia or elsewhere.

318.7 In determining where an individual's service is localized, the Director shall balance the interest of a claimant in receiving benefits pursuant to the Act and the interest of an employer in making contributions to a single jurisdiction for all the services of an individual regardless of where the service is performed.

319 EMPLOYER RECORDS

- 319.1 In accordance with §17(a) of the Act, employers shall maintain work records for all employees.
- 319.2 Retained payroll sheets, cards, or other forms maintained by an employer in the usual course of business shall constitute sufficient work records; Provided, that the records contain the following information:
- (a) Name and social security number of each employee;
 - (b) Beginning and ending dates of each pay period;
 - (c) Wages paid for each pay period, including the value of non-monetary remuneration; and
 - (d) Dates of employment and separation.

320 EMPLOYER REPORTS

- 320.1 All reports deemed necessary by the Director for the effective administration of the Act, pursuant to §§4(a) and 17 of the Act, shall be filed by employers upon forms supplied by the Director.
- 320.2 Employer reports shall contain all information requested by the Director.
- 320.3 Each employer shall, not later than the last day of the month following the close of each calendar quarter, make a report of and pay the contributions which shall have accrued with respect to wages paid during the quarter to the Director.
- 320.4 The Director may extend the time for filing quarterly reports for all employers for a period of not more than thirty (30) calendar days if the Director finds that either the purposes of the Act would be defeated or the contribution rate appeal rights of employers established in §3(c)(10) of the Act would be unduly burdened or jeopardized by requiring timely filing of the quarterly reports.
- 320.5 After making the findings specified in §320.4, the Director shall simultaneously publish notice of the extension of time to file employers' quarterly reports in a newspaper of general circulation in the District of Columbia and in the D.C. Register at least twenty-one (21) days immediately preceding the last day of the month following the close of the calendar quarter.

321 WAGES

321.1 In accordance with §1(c) of the Act, the term "wages" includes all remuneration for personal services paid by an employer to an employee.

321.2 All wages paid shall be reported to the Director.

321.3 If compensation is paid in any medium other than cash, the employer shall include the cash value of the non-monetary remuneration in the amount reported as wages.

321.4 If the cash value of non-monetary remuneration is agreed to by the employer and the employee, the agreed value shall be reported as wages.

321.5 If the cash value of non-monetary remuneration is not agreed to, the employer shall place a reasonable value upon the thing used in the place of money and report that amount as wages.

321.6 For the purpose of computing contributions, the cash value of remuneration paid as food and lodging shall be deemed reasonable if reported at not less than the following values:

- (a) Full Board and Room\$29.00
per week;
- (b) Board (3 meals per day)\$3.25
per day;
- (c) Board (Less than 3 meals per day)\$1.00
per meal;
- (d) Lodging.....\$9.75 per week or \$1.50
per day;

321.7 If the agreed cash value for food and lodging is more than the amounts set forth in §321.6 the higher amount shall be reported.

321.8 The following amounts shall be reported as wages;

- (a) Amounts paid to an employee while an employee is on vacation or sick leave;
- (b) Prizes awarded employees in connection with services performed in the business; and
- (c) Sums disbursed by an employer based on the employers addition of a certain percentage to the customer's bill as a tip.

321 WAGES (Continued)

321.9 Drawing accounts shall be reported as wages at the amount actually drawn by the employee regardless of the status of the account between employer and employee at the close of the pay period.

321.10 The following amounts shall not be reported as wages:

- (a) Any definite allowance which represents no profit to the employee but is used by the employee to meet expenses of the employer's business.

(For example -- an allowance for automobile, oil, and gas to a salesman required to work in his or her own car over an extended territory; all transit flash passes or tokens; telephone in an employee's residence for the employer's convenience; and entertainment money expended on the employer's customers);

- (b) Where an employer requires an employee to wear a special uniform and the employer launders or pays for the laundering of the uniform, the amount paid for laundering;

- (c) Discounts allowed employees upon goods purchased from the employers;

- (d) So-called "supper money", being an allowance for a meal when the employee works overtime and is thus required to eat at other than his or her regular boarding or living place.

321.11 Severance pay constitutes earnings pursuant to §1(d) of the Act. Employers shall report all severance payments on the quarterly wage reports.

322 CONTRIBUTION RATE REVIEW

322.1 In accordance with §3(c)(10) of the Act, the Director shall appoint a Contribution Rate Review Committee to hear and decide appeals by employers from contribution rate determinations.

322.2 Requests for review and redetermination of contribution rate determinations shall be filed within thirty (30) days after the mailing of notice of rate determinations to an employer's last known address or within thirty (30) days after delivery of the notice in the absence of mailing.

322.3 The Director may voluntarily adjust the contribution rate determination upon receipt of a request for review.

322 CONTRIBUTION RATE REVIEW (Continued)

- 322.4 If it is not apparent from the employer's account that an adjustment is appropriate, the Director shall grant an opportunity for hearing before the Contribution Rate Review Committee.
- 322.5 The Contribution Rate Review Committee shall consist of three (3) employees of the Director. The composition of the Committee shall be as follows:
- (a) One (1) member shall have knowledge of the employer accounting process;
 - (b) One (1) member shall have knowledge of the overall financial accounting system; and
 - (c) One (1) member shall have knowledge of the legal aspects of the employer contribution process.
- 322.6 The decision of the Contribution Rate Committee shall be in writing and shall be supported by substantial evidence in the record.
- 322.7 The decision of the Contribution Rate Committee shall be the final agency action, shall be written, and shall be supported by substantial evidence in the record.
- 322.8 Judicial review of the decision of the Contribution Rate Review Committee may be sought by filing an application for review with the District of Columbia Court of Appeals within fifteen (15) days after the mailing or receipt of notice of the decision.

399 DEFINITIONS

399.1 The terms defined in the Act shall have the meanings set forth in the Act. In addition, when used in the Act or this chapter, the following words defined in this section shall have the meaning ascribed:

Act - the District of Columbia Unemployment Compensation Act, as amended, 49 Stat. 946 (1935), §46-301, et seq., D.C. Code, 1981 ed.

Active Progress - the action being taken toward the settlement of a labor dispute, including but not limited to, negotiating, picketing, and court proceedings.

Claim - an application by a claimant for the determination of eligibility for benefits, benefit amount, and duration of benefits which certifies to the beginning date of a period of unemployment.

Claimant - an individual who files a claim for unemployment compensation.

Continued Claim - a week of unemployment for which waiting period credit or payment of compensation is requested.

Deductible Retirement Pension or Annuity - any amount received or applied for with respect to any week after March 31, 1980, as a retirement pension or annuity under a public or private retirement plan including any such sum under Title II of the Social Security Act.

Director - the Director of the District of Columbia Department of Employment Services or his or her designee.

Employer's Reserve - an employer's cumulative contributions for taxable wages subsequent to May 31, 1939, less the cumulative benefits since July 1, 1939, as chargeable to his or her experience rating account through the computation date of each year.

Experience Rating Account - the account established and maintained by the Director pursuant to §3(c)(1) of the Act which shows each employer's cumulative contributions, cumulative benefit charges, average annual payroll, reserve, reserve ratio, and contribution rate for each calendar year or part thereof.

Initial Claim - the first claim filed in benefit year to request a determination of entitlement to and eligibility for compensation which results in an appealable determination.

Interested Party - a claimant or an employer whose statutory rights or obligations pursuant to administration of the Act may be affected by the outcome or disposition of a determination, redetermination, or decision.

Labor Dispute - any controversy concerning terms, tenure or conditions of employment under an existing collective bargaining agreement.

399 **DEFINITION** (Continued)

399.1 (Continued)

Lockout - the withholding of otherwise available work by an employer.

Month - (a) with respect to employees paid on a weekly basis, that period covered by all the weeks which commence within the calendar month or (b) with respect to employees paid on any basis except a weekly basis, a calendar month.

Reserve Ratio - the employers reserve in relation to his or her average annual payroll.

Severance Pay - a payment in addition to any back wages due made by an employer to an employee whose employment is permanently terminated by the employer.

Waiting Period - the first week of eligibility within a benefit year for which compensation is not payable in accordance with §9(e) of the Act.

